



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51, 52, 55, 70, 71 and 124**

**[EPA-HQ-OAR-2015-0090, FRL-9937-21-OAR]**

**RIN 2060-AS59**

**Revisions to the Public Notice Provisions in Clean Air Act Permitting Programs**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) proposes to revise the public notice rule provisions for the New Source Review (NSR), title V and Outer Continental Shelf (OCS) permit programs of the Clean Air Act (CAA) and the corresponding onshore area (COA) determinations for implementation of the OCS air quality regulations. This action would remove the mandatory requirement to provide public notice of a draft air permit, as well as certain other program actions, through publication in a newspaper and would instead allow for electronic noticing (e-notice) of these actions. The proposed rule revisions would apply to major source air permits issued by the EPA, by EPA-delegated air agencies, and by air agencies with EPA-approved programs (with the exception of permits that are issued pursuant to the Tribal NSR Rule, which already allows for e-notice methods).

**DATES:** *Comments.* Comments must be received on or before **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Public hearing.* If anyone contacts us requesting a public hearing on or before **[INSERT DATE 15 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, we will

hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent *Federal Register* document.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2015-0090, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** For general information on this proposed rule for NSR and OCS programs, please contact Mr. Dave Svendsgaard, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541-2380 or by email at [svendsgaard.dave@epa.gov](mailto:svendsgaard.dave@epa.gov); for title V programs please contact Ms. Grecia Castro, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541-1351 or by email at [castro.grecia@epa.gov](mailto:castro.grecia@epa.gov). To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541-0641 or by email at [long.pam@epa.gov](mailto:long.pam@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### *A. How is this Federal Register notice organized?*

The information presented in this document is organized as follows:

- I. General Information
  - A. How is this *Federal Register* notice organized?
  - B. Does this action apply to me?
  - C. What should I consider as I prepare my comments for the EPA?
  - D. How can I find information about a possible public hearing?
  - E. Where can I obtain a copy of this document and other related information?
- II. Overview of Action
- III. Background
- IV. Proposed Revisions
  - A. What are the e-notice requirements?
  - B. What are the e-access requirements?
  - C. Requirements for Agencies Implementing the Federal Permit Program Rules
  - D. Requirements for Agencies Implementing Approved Programs Pursuant to the EPA's Permitting Rules for States
  - E. Soliciting Comment on Allowing Temporary Use of Alternative Noticing Methods
  - F. Clarifying E-Notice and E-Access Applicability for Minor NSR Permits
  - G. Notice Requirements for PSD Permit Rescissions
- V. Policy Rationale and Legal Basis
- VI. Implementation
  - A. Agencies Implementing Federal Preconstruction Permit Program Rules
  - B. Agencies Implementing State Preconstruction Permit Program Rules
  - C. Agencies Implementing Approved Operating Permit Programs
  - D. Agencies Delegated to Implement the Federal Operating Permit Program
- VII. Environmental Justice Considerations
- VIII. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  - B. Paperwork Reduction Act (PRA)
  - C. Regulatory Flexibility Act (RFA)
  - D. Unfunded Mandates Reform Act (UMRA)
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. National Technology Transfer and Advancement Act  
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority  
Populations and Low-Income Populations  
IX. Statutory Authority

*B. Does this action apply to me?*

Entities potentially affected by this proposed rule include air agencies responsible for the permitting of stationary and OCS sources of air pollution or for determining COA designation for implementation of the OCS Air Regulations. This includes the EPA Regions, and both EPA-delegated air programs and EPA-approved air programs that are operated by state, local and tribal governments. Entities also potentially affected by this proposed rule include owners and operators of stationary and OCS sources that are subject to air pollution permitting under the CAA, as well as the general public who would have an interest in knowing about permitting actions, public hearings and other agency actions.

*C. What should I consider as I prepare my comments for the EPA?*

*1. Submitting CBI.* Do not submit this information to the EPA through <http://www.regulations.gov> or email. Clearly mark the specific information that you claim to be CBI. For CBI in a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*2. Tips for preparing comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, *Federal Register* date and page number).
- Follow directions. The proposed rule may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used to support your comment.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns wherever possible, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

*D. How can I find information about a possible public hearing?*

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541-0641 or by email at [long.pam@epa.gov](mailto:long.pam@epa.gov).

*E. Where can I obtain a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this *Federal Register* document will be posted at <http://www3.epa.gov/nsr/actions.html> and <http://www3.epa.gov/airquality/permits/actions.html>.

## **II. Overview of Action**

The CAA authorizes the EPA to administer and oversee the permitting of stationary and other sources of air pollution. To accomplish this obligation, the EPA has promulgated permitting regulations for construction of sources pursuant to NSR under title I of the CAA, for operation of major and certain other sources of air pollutants under title V of the CAA; and for OCS sources under CAA § 328. These regulations are contained in 40 CFR parts 51, 52, 55, 70, 71 and 124, and cover the requirements for federal permit actions (*i.e.*, when the EPA or a delegated air agency is the permitting authority<sup>1</sup>) and minimum permitting requirements under an approved state implementation plan (SIP) and title V program.<sup>2</sup> These rules contain, among other things, requirements for public notice and availability of supporting information to allow for informed public participation in permit actions. These regulatory requirements for public participation in permit and other actions are the subject of this proposed rule.

---

<sup>1</sup> In lieu of “permitting authority,” in this preamble and rule, we sometimes use the terms “permitting agency,” “reviewing authority,” and “air agency” (or “agency”). These terms generally denote all forms of air permitting authorities, including EPA Regions, EPA-delegated air programs, and air programs that are operated by state, local and tribal governments and that implement their own rules under an EPA-approved implementation plan. Furthermore, the rules for the federal permit programs sometimes use the terms “Administrator” and “Director” in referring to the permitting authority.

<sup>2</sup> NSR includes the Prevention of Significant Deterioration (PSD), nonattainment major NSR (NNSR), and minor NSR permitting programs. Requirements for the NSR programs can be found at 40 CFR 51 for approved state and local permitting programs, and at 40 CFR 52 for federal permit programs. (In addition, 40 CFR 52 references part 124 for additional requirements.) Requirements for approved title V operating permit programs are located at 40 CFR 70 and for federal operating permit programs at 40 CFR 71. Requirements for the permitting of OCS sources can be found at 40 CFR 55.

In general, prior to issuing a permit to a major stationary source<sup>3</sup> of air pollution, the permitting authority prepares a draft permit, provides notice to the public of the draft permit, and provides the public reasonable access to the draft permit, the application, and supporting information. The permitting authority must provide an opportunity for public comment, as well as an opportunity to request a public hearing on the draft permit. *See, e.g.*, 40 CFR 70.7(h). In addition, the information that supports the permit decisions – referred to in some cases as the “permit record” or “administrative record” – must be made available to the public for inspection. *Id.* Under the title V programs, these procedures apply to permits for all covered sources, including certain non-major sources. *See* 40 CFR 70.3.<sup>4</sup>

This action addresses the method by which the permitting agency provides the required notice of the permitting action and access to the information supporting the action. We specifically propose to remove from the EPA rules the mandatory requirement that draft permits under CAA permitting programs for major sources be noticed in a newspaper of general circulation and instead allow – and, in some cases, require (as explained below) – the use of electronic methods to provide notice of and access to these draft permits. We are not changing the majority of the existing procedural requirements for processing permit applications and the requirement to keep a record of the materials that support the permit decisions. We also are not changing existing requirements as to the substance of the information that must be made available when the permitting agency notifies the public of the draft permitting action.

---

<sup>3</sup> The term “major source” in the title V program rules includes any “major stationary source” under the NSR program rules. *See, e.g.*, 40 CFR 52.21(b)(1)(i) and 40 CFR 71.2. In this preamble, we use the terms “major source” and “major stationary source” interchangeably.

<sup>4</sup> The EPA’s rules generally require less extensive public participation procedures for the permitting of minor sources and minor modifications.

We are also not proposing to revise the federal rules for public notice that apply to minor NSR permits under 40 CFR part 51.161, which require “notice by prominent advertisement.” *See* § 51.161(b)(3). In 2012, the EPA clarified through guidance that the § 51.161 term “prominent advertisement” is media neutral, and therefore newspaper notice of minor NSR actions is not required. (“EPA’s 2012 Memorandum”)<sup>5</sup> The guidance memorandum did not, however, address notice requirements for synthetic minor source permits.<sup>6</sup> In this action, we are proposing to extend the media neutrality policy of the EPA’s 2012 Memorandum to all permit actions governed by § 51.161, including synthetic minor source permits, and to ensure that e-access methods are available for minor NSR permit actions.

We are also not proposing to revise the public participation requirements for permits that establish a Plantwide Applicability Limitation (PAL), which cross reference the public participation procedures at § 51.161. *See* §§ 51.165(f)(5), 51.166(w)(5), and 52.21(aa), and Appendix S to part 51, Section IV.K.5. As discussed in the preamble to the PAL regulations (“PAL preamble”), “[t]he reviewing authority must establish a PAL in a federally enforceable permit (for example, a “minor” NSR construction permit, a major NSR permit, or a SIP-approved operating permit program).” 67 FR 80208; December 31, 2002. The PAL preamble further explains that “the reviewing authority must provide an opportunity for public participation when issuing a PAL permit ... consistent with the requirements at § 51.161 and

---

<sup>5</sup> Memorandum from Janet McCabe, Principal Deputy Assistant Administrator, Office of Air and Radiation, “Minor New Source Review Program Public Notice Requirements under 40 CFR 51.161(b)(3)” (April 17, 2012). *See* <http://www2.epa.gov/sites/production/files/2015-07/documents/pubnot.pdf>.

<sup>6</sup> A synthetic minor source is a source that has taken restrictions to avoid applicability of major source requirements. Under the NSR program, such restrictions must be legally and practically enforceable. *See, e.g.*, 67 FR 80191.



include a minimum of a 30-day period for public notice and opportunity for public comment.”

*Id.* As explained above, in EPA’s 2012 Memorandum we clarified that the term “prominent advertisement” in § 51.161 is media neutral for minor NSR permits, and in this action we are proposing to extend the applicability of the policy in that memorandum to all permit actions governed by § 51.161. In addition, the PAL preamble explains “[w]here the PAL is established in a major NSR permit, major NSR public participation procedures apply.” *Id.* In this rule action, we propose to amend the public participation requirements for major source permits under CAA permitting programs to allow or require the use of electronic methods to provide notice of these permits. Therefore, since this proposed action along with our previous rules and guidance would collectively ensure that § 51.161 and the major source specific regulations allow for e-notice in lieu of newspaper notice, and these public notice requirements would apply as well to all of the types of permits that may be used to establish a PAL, we believe that it is unnecessary to propose any revisions to the PAL-specific provisions of EPA’s air permitting rules.

In addition, these proposed revisions would not change the requirements for nonattainment NSR (NNSR), minor NSR, and synthetic minor NSR permits in Indian country, which are contained in 40 CFR part 49 and allow for other means of public noticing beyond a newspaper of general circulation. *See* §§ 49.157 (minor NSR and synthetic minor NSR permits) and 49.171 (nonattainment major NSR permits). However, these proposed revisions would change the requirements for PSD permits that the EPA issues in Indian country, as well as Prevention of Significant Deterioration (PSD) permits that are issued by a tribe through a delegation agreement or by a tribe that has an approved tribal implementation plan (TIP) that incorporates by reference the public noticing requirements in the federal PSD rules at 40 CFR 52.21. Also, since this proposal would revise the noticing requirements in 40 CFR 71, which

apply to Indian country absent an approved part 70 program, the revisions would affect the public notice procedures for the majority of title V operating permits in tribal lands.<sup>7</sup> Also, the tribal agency with an approved part 70 program would have the option to implement e-notice under the same terms that apply to other approved part 70 programs.

This action addresses the public notice requirements for all air agencies. For the noticing of major source permits by the EPA and other air agencies that implement the federal permitting rules, e-notice would be required under this proposed rule. For major source permits issued by air agencies that implement their own rules approved by EPA, this proposed rule would allow additional flexibility such that these permitting authorities would have the option to provide e-notice or to continue to provide traditional newspaper notice, although they must adopt a single, “consistent noticing method” to be used for all of their major source permits. Thus, where an agency opts to post notices of draft permits on a website in lieu of newspaper publication, it must post all notices to this website in order to ensure that the public has a consistent and reliable location to turn to for all permit notices. If the agency does not maintain a consistent noticing method (*i.e.*, if the state posts some notices to a website and others in the newspaper), the public may not know where to look for information regarding a permit for a source of interest to them. We are taking comment on this proposed approach of requiring a consistent noticing method for these approved state programs, as well as the option of not requiring a consistent noticing method.

---

<sup>7</sup> Most states, certain local agencies and currently one tribe have approved part 70 programs. The EPA administers the part 71 federal program in most areas of Indian country (one tribe has been delegated implementation authority) and on the Outer Continental Shelf (when there is no delegated state permitting authority).

In addition, to satisfy the proposed requirements for e-notice, except for programs that implement part 51 regulations for PSD and NNSR permits and states that issue OCS permits, the air agency must maintain a mailing list that will notify any person on the list of any new public notice. This approach is consistent with the current noticing requirements in the federal rules for NSR and EPA-issued OCS permits, and for federal and state operating permits under parts 70 and 71 (and OCS permits subject to these requirements), which all require that a copy of the notice be mailed to persons who have subscribed to the appropriate mailing list. The EPA believes that continuing with this approach will maintain the current efforts to reach communities through a variety of methods. This proposed rule clarifies that distributing the public notice information to the persons on the mailing list can be by way of email or the more traditional mailing methods (*e.g.*, postal service, courier).

This proposed action also requires that, when a permitting authority adopts the e-notice approach, it also must provide e-access. For the purpose of this proposed rule, e-access means that the permitting authority must make the draft permit available electronically (*i.e.*, on the agency's public website or on a website identified by the permitting agency, which could be an online document management system) for the duration of the public comment period. It is important to note that, while e-access in this proposed rule only pertains to the availability of and access to the draft permit during the public comment period, nothing in this rule alters the requirement for the permitting authority to maintain a record of the permit action and to make it available to the public. Thus, a permitting authority that is satisfying the proposed conditions of e-access by posting the draft permit on a website must also provide the public with reasonable access to the other materials that support the permit decision (as it has always been required to

do). Access to the other materials can be provided either electronically, or at a physical location, or a combination of both.

In addition to the proposed approach described above for EPA-approved permitting programs, we are requesting comment on an alternative approach. In the alternative approach, permitting programs that implement 40 CFR part 51 or 70 and that select e-notice as their consistent noticing method would have the option, but would not be required to, provide e-access. This approach could be of benefit to some agencies that may notice permits using an online permits register – which would qualify for e-notice under this rule proposal – but do not have the website capabilities to satisfy the e-access requirement of making the draft permit available electronically.

Additionally, we are soliciting comment on including a provision in the regulations to allow air agencies to temporarily use an alternative noticing method if their website is unavailable for a period of time. This may be necessary during periods when a website is temporarily offline due to, for example, malfunctions, transitions to a different website platform, or emergency situations that result in prolonged electrical system outages. As with the website noticing method, the permitting agency would need to assure that the alternative noticing method provides adequate notice to the affected public. We specifically seek comment on the criteria for determining when the alternative method should be available, the length of time it could be used, and how the transition to the method would be conveyed to the public.

Finally, we are proposing to extend the use of e-notice methods to three non-permitting actions. In each case, the regulatory provision currently requires notice of the action by way of newspaper publication. We briefly describe each provision below.

- The “OCS Air Regulations” at 40 CFR part 55 apply to more than just OCS permitting actions. Specifically, when the EPA makes a COA designation determination, it must do so by way of a process that allows for public comment on the draft determination. Through this action, we are proposing to require electronic notice of the COA designation.
- The existing federal PSD regulations contain a provision for “permit rescission” that only refers to newspaper notification. Specifically, paragraph 40 CFR 52.21(w)(4) requires that, if an agency rescinds a permit, it shall give “adequate notice of the rescission,” and that newspaper publication “shall be considered adequate notice.” We are proposing in this action to revise the provision to specifically require that the Administrator notify the public of a permit rescission by e-notice.
- Paragraph 40 CFR 71.4(g) provides that, when the EPA takes action to administer and enforce, or to delegate, a federal operating permits program, it will publish a notice in the *Federal Register* and, “to the extent practicable, publish notice in a newspaper of general circulation within the area subject to the part 71 program effectiveness or delegation.” We are proposing to revise this provision to require the additional notice of the program effectiveness or delegation by way of posting on a public website identified by the EPA.

It is important to note that the EPA is not proposing additional public participation where existing rules do not require public participation. Thus, the minimum notice and access requirements being proposed in this rule would apply to the public participation procedures of air quality permits issued by EPA and other air agencies in cases where the current rules require public participation in a permitting decision.

### III. Background

While the CAA requires permitting authorities to offer the opportunity for public participation in the processing of air permits, it does not specify the best or preferred method for providing notice to the public. *See, e.g.*, CAA 165(a)(2). The EPA's air permitting regulations also address the issue of public participation, and in those rules there is more specificity regarding the methods of meeting the public notice obligations. The EPA's regulations are intended to ensure that the EPA and other permitting authorities provide adequate public notice of their permitting actions. Among the procedural requirements for public notice, the current regulations for the major NSR, title V and OCS programs include (or cross reference to) specific language that requires agencies to notify the public of pending permitting actions and the opportunity to comment on those permitting actions by advertisement in a newspaper of general circulation.<sup>8</sup>

When the EPA first developed public notice provisions for the major NSR program in the late 1970s and early 1980s, newspaper advertisement was the most commonly accepted method for providing notice of permits and other agency actions in the community. The EPA, therefore, finalized rules that contained, among other things, requirements for newspaper notice of permitting and other actions. When the title V rules were first issued in 1992, the EPA considered the public notice requirements for PSD permits and similarly required in part that the public be notified of a permitting action by way of "a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice."

---

<sup>8</sup> Those regulations also specify the information that the public notice must include, and, as noted above, this regulation does not change such information requirements.

40 CFR 70.7(h)(1).<sup>9</sup> OCS regulations, also promulgated in 1992, included this same approach of requiring public notice via newspaper publication, by requiring that the applicable requirements for federal PSD permits in 40 CFR part 124 also apply to the processing of OCS permit applications.<sup>10</sup> The EPA also added specific language within the OCS rules that require COA designation determinations to be announced by way of a newspaper of general circulation. Consequently, in promulgating the rules for NSR, title V and OCS air programs, the EPA determined that it was most appropriate for permitting actions, COA designations, and public hearings to be announced to the public by a newspaper notice. The public notice procedures in the regulations for each of these programs have not changed with respect to newspaper notification since they were first developed and issued.

Permitting authorities typically have met the required newspaper notice provision by publishing a single-day legal notice of availability of the draft permit action in a local newspaper. In some cases, depending on the location of the source and the demographics of the affected community, some permitting agencies may publish the notice in multiple newspapers to reach the intended audience, or may provide bilingual newspaper notices of their permitting actions. The specific contents of the newspaper notice are specified for some programs, and they tend to vary with different permitting authorities. Most notices typically contain basic information about the draft permit, such as the permit number, the name and physical address of the facility, and the name and contact information of a person from whom interested persons may obtain additional information on the draft permit. Depending on the permitting authority, the notice may include

---

<sup>9</sup> See 57 FR 32250 (July 21, 1992) regarding state operating permit programs (40 CFR 70) and 61 FR 34202 (July 1, 1996) regarding federal operating permit programs (40 CFR 71).

<sup>10</sup> See 57 FR 40792 (September 4, 1992).

more detailed information on the draft permit, such as the anticipated emissions increase from the proposed project. The public notice for the permit also informs interested parties on how to request and/or attend a public hearing and how to access additional information relevant to the draft permit. This additional information is typically housed in a designated public reading room near the source or in a library at the permitting agency with specified hours of operation for viewing the documents. In the case of title V permits, as well as PSD and OCS permits that follow 40 CFR part 124, the regulations also provide for mailing lists for permit actions and, as a result, notice may also occur for these draft permits (in addition to the mandatory newspaper notice) via direct mail or other communication to those persons included on a mailing list.

Over the years, however, availability of and access to the basic forms of electronic media – namely, the Internet and email – have increased significantly across the United States. More recently, sophisticated mobile devices and high-speed wireless networks are transforming the Internet and how our society interacts with it.<sup>11</sup> One effect of this electronic media development is that circulation of newspapers and other print media is declining, making printed newspaper notice less effective in providing widespread public notice of permit actions. Over the same time period, many permitting authorities developed their own Internet websites and began using email for the purpose of communicating with the public. In doing so, many of these agencies began to supplement the required one-time newspaper publication with the posting of electronic notices of availability of draft permits via their agency websites. Once the permitting agency develops its website and formats it to post permitting notices, the agency has an effective and convenient way

---

<sup>11</sup> Exploring the Digital Nation: Embracing the Mobile Internet, U.S. Department of Commerce, National Telecommunications and Information Administration, October 2014, [http://www.ntia.doc.gov/files/ntia/publications/exploring\\_the\\_digital\\_nation\\_embracing\\_the\\_mobile\\_internet\\_10162014.pdf](http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_embracing_the_mobile_internet_10162014.pdf).



to communicate permitting-related information to the majority of the public. In addition, the effort and cost to post a notice on an already-established website is generally lower than the expense of purchasing a newspaper advertisement, and it generally enables broader and faster dissemination of information to interested and affected parties as compared to newspaper noticing.

The EPA believes that having the notice of availability and the draft permit remain electronically available on an agency's website for an extended period of time, as compared to a one-time publication in an area newspaper that directs the public to a reading room at the permitting agency, or at a library or other location near the source, results in a significant increase in public awareness of the proposed permitting action and access to the draft permit. Even without this additional electronic access to the draft permit, posting the notice for the duration of the public comment period provides more widespread public notice than a single-day publication in a newspaper of general circulation.

We note that, in some instances, communities that are potentially affected by a proposed permitting action may have limited access to the Internet, and therefore may rely more on newspapers for receiving their information. In these cases, newspaper publication can still provide a means to convey permitting information to these communities. However, we expect that in many cases these communities would have access to a public library with Internet access that would provide access to the online permit notices and draft permits. Furthermore, because many permitting authorities are now supplementing their newspaper notices with electronic posting of the notice on their agency website, it seems unlikely that the public would continue to seek out permitting announcements in newspapers in the future. As discussed later in this preamble, a report issued by the National Environmental Justice Advisory Council (NEJAC)

found that publication in the legal section of a newspaper is antiquated and ineffective and is not ideal for providing notice to affected environmental justice (EJ) communities. Given this significant shift away from the public's reliance on traditional newspapers for information, and the corresponding increased reliance on the Internet, the EPA recognizes that newspaper notice is no longer the only, or most effective, method of announcing permitting actions to reach the public.

To this end, the EPA has identified the need to allow for more noticing options than just newspaper publication. In 2011, the EPA issued the Tribal NSR Rules that contained, among other things, requirements for noticing of permits in Indian country that allowed for options other than newspaper and print media.<sup>12</sup> The July 2011 rule provides options such as web posting and email lists among the methods that the permitting authority may use to provide adequate public notice in agreement with the prominent advertisement goal. *See* 76 FR 38764. Then, through guidance issued in 2012, the EPA clarified its position on what constitutes public notice for minor NSR permit programs and is adequate to meet the requirement of "notice by prominent advertisement." 40 CFR 51.161(b)(3). As noted above, the EPA's 2012 Memorandum explained, "...as the public continues to increase the use of web based sources of information and states experience decreases in budgets allocated for public noticing of permits, we believe that for the purposes of minor NSR programs and permits, the 'prominent advertisement' requirement at 40 CFR 51.161(b)(3) is media neutral." The guidance further explains that the EPA believes "it is appropriate to give state and local programs the flexibility to determine what constitutes prominent advertisement for purposes of minor NSR programs and permits, consistent with the

---

<sup>12</sup> *See* 76 FR 38748, July 1, 2011.

overarching requirement that the public have routine and ready access to the alternative publishing venues.”

#### **IV. Proposed Revisions**

This action proposes to remove the mandatory requirement that draft permits for sources subject to the major NSR, title V or OCS programs be noticed in a newspaper of general circulation and instead allow the use of electronic methods to provide notice of draft permits. This action also proposes these same revisions for COA designations in the OCS program, permit rescissions under the federal PSD program, and noticing of federal operating permits programs. In the case of permits issued by the EPA or other agencies implementing 40 CFR parts 52 or 71, we are proposing to require that the EPA provide e-notice for all draft permits. For permits issued by other air agencies – specifically, agencies that implement 40 CFR parts 51 or 70 – we are proposing that those permitting authorities would have the option to adopt either e-notice or traditional newspaper notice; however, they must select one of the noticing methods as their consistent noticing method to be used to notice all of their draft permits and their rules must reflect this selection.

This proposed action also requires that, if the permitting authority adopts the e-notice approach, it would also provide e-access as described in this rule. Specifically, the agency would make the draft permit available electronically for the duration of the public comment period. Furthermore, this rule proposes specific minimum requirements for satisfying the meaning of the terms “e-notice” and “e-access.” While e-access in this rule pertains only to the availability and access to the draft permit, nothing in this rule nullifies the requirement for the permitting authority to maintain a record of the permit decisions and to make it available to the public. Hence, a permitting authority that is satisfying the proposed terms of e-access by posting the

draft permit on its website must also maintain the other materials that support the permit decision and make them publicly available – either electronically, or at a physical location, or a combination of both. This proposed action does not affect any of the record retention or CBI policies of agencies.

More specifically, this proposed action includes revisions to 40 CFR part 51.166 (state/local PSD permits), part 52.21 (EPA/delegated agency-issued PSD permits), part 70 (state/local/tribal operating permits), part 71 (EPA/delegated agency-issued operating permits), part 55 (EPA-issued OCS permits and COA designations), and part 124 (EPA-issued permits applying generally to a number of media programs, including EPA-issued PSD and OCS permits). In addition, this action proposes to add specific public notice provisions in 40 CFR 51.165 (for state/local major NNSR permits), which currently does not contain section-specific public notification requirements (except for PAL permits).<sup>13</sup> However, since the PSD program rules under 40 CFR 51.166 contain specific newspaper public notice provisions at § 51.166(q)(2)(iii), for clarity and consistency purposes we are proposing to add parallel noticing provisions to § 51.165 to avoid any possible confusion as to the methods for providing notice under approved state and local NNSR programs.

It is important to note that some of the rule sections that we are proposing to amend have existing noticing and access requirements that are specific to the section and may not appear in other sections. We are not proposing to alter these specific rule provisions in this action. For

---

<sup>13</sup> While 40 CFR 51.165 does not currently contain specific noticing provisions for draft major source permits, agencies implementing § 51.165 rely on the provisions of § 51.161 for the noticing of NNSR permits. As noted in this preamble, the EPA's 2012 Memorandum clarified that the terms used in § 51.161 allow for a media neutral approach to the noticing of permits, but the memorandum only applies to minor NSR permits.

example, the notice requirements in § 51.166(q) relate to the “degree of increment consumption” that is expected from the source or modification, but these requirements are not in other sections. Similarly, parts 70 and 71 have differing requirements for what information the notice should identify. In the federal PSD and the OCS permitting sections, there are currently no specific provisions for permit noticing – nor are we proposing specific requirements through this action – but these sections cross reference the procedural requirements in part 124 for which amendments are being proposed in this action. Consequently, the proposed rule revisions that would allow for e-notice and e-access appear differently in each rule section, but the basic effect of the changes is the same across all of the sections being revised.<sup>14</sup>

In specifying that an agency electronically post the notice and draft permit “for the duration of the public comment period,” we note that there may be instances during the comment period when the website is unavailable. This may occur due to, among other things, website failures or power outages. While we expect that these situations would be infrequent and short in duration, they would nonetheless temporarily interrupt the noticing of the draft permit and the electronic posting would be less than “the duration of the comment period.” We do not interpret “the duration of the comment period” to be a requirement for uninterrupted web access, but rather to mean that, to the extent that interruptions to the accessibility of the posted notice and draft permit occur, they would be short and infrequent. Further, we expect that the permitting authority or webmaster would be in a good position to make a reasonable assessment, based on experience, regarding unusual interruptions that would significantly affect the noticing of the permit. In general, we do not expect that short interruptions would significantly affect the

---

<sup>14</sup> The docket for this action contains a document that reflects how the proposed rule changes compare to the existing rule provisions. *See* EPA-HQ-OAR-2015-0090-0002.

noticing of the permit, and we do not expect these situations to result in a need for the comment period to be extended to account for the time during which the website is unavailable. On the other hand, for an agency that is providing only electronic access to the permit record (*i.e.*, no physical access options), website interruptions could present larger problems for anyone who is attempting to understand the draft permit and provide timely comments. In such cases, the air agency should evaluate the degree of limitation that the interruption has on the public's access to the permit record. For any interruption that impacts public access for an extended period, we recommend that the agency provide hard copies of the permit record at appropriate locations. In addition to taking comment on this proposed approach for the phrase "for the duration of the public comment period," we are soliciting comment on whether we should include a provision in the regulations that allows a permitting authority to use an alternative noticing (and/or access) method to reach the affected public while the website is unavailable.

In addition to the proposed rule approach, we are taking comment on an alternative approach for air agencies that implement 40 CFR parts 51 and 70 that would not require these agencies to couple e-notice with e-access. In other words, if an agency adopts e-notice as its consistent noticing method, it would not be required to provide e-access (although the agency could provide e-access at its discretion – *e.g.*, to supplement its physical access of the draft permit). This alternative approach may be of benefit to some agencies that notice permits using an online permits register – which would qualify for e-notice – but do not have the technical capabilities to satisfy the e-access requirement of making the draft permit electronically available.

These proposed rules provide flexibility to air agencies with EPA-approved programs, such that they are no longer required to use newspaper noticing, although they can continue to

use the newspaper method for noticing if they choose. In the case of EPA and other air agencies that implement the federal permitting rules, we are proposing that these programs are required to use e-notice and e-access, but these terms are limited in scope to require only minimal electronic noticing and access and to allow the agency the flexibility to use either its own website or another publicly available website that it identifies. We believe the proposed rule revisions, once final, will lead to more effective noticing of air permitting actions and will likely promote additional public participation in the permitting process, while also avoiding the higher costs of newspaper advertisement.

*A. What are the e-notice requirements?*

For the purpose of this proposed rule, the term “e-notice” means the notice of availability of the draft permitting action is provided on the permitting agency’s website or another public website identified by the permitting agency for the purpose of noticing permits. The website should be easily accessible by the public, and the noticing section of the website should be “user friendly” – *i.e.*, organized in such a way that it directs the public to the entire notice in a clear and straightforward manner. In some cases, the website may be characterized as a “portal” or it can be some other publicly accessible website that is identified by the permitting authority and allows for the noticing of draft permits (*e.g.*, a state permits register).

In some of the rule sections proposed for revision, the permitting authority must maintain a mailing list that will be used to notify persons on the list of any new public notice of a draft permit. This requirement exists in part 124 for EPA-issued PSD and OCS permits and in parts 70 and 71 for title V permits. We are proposing that the mailing list requirement would continue to apply for the noticing of these permits, and we are proposing that the mailing list requirement would not apply to programs that currently do not have a mailing list requirement – namely,

agencies that follow part 51 regulations for PSD and NNSR permits and for state-issued OCS permits. Although the mailing list provisions were originally created with the idea that authorities would use the postal service to physically convey the notice to the recipients on the list, it has evolved over time such that many agencies that maintain a mailing list use electronic notification rather than mailing the notice through the postal service. In general, email notification has become a common practice among air agencies that currently provide supplemental notice via their agency website. Furthermore, many of these agencies' websites are equipped with a hyperlink or a radio button that facilitates convenient and easy sign up for interested persons to subscribe to the mailing list. Thus, we are not changing the current rule sections that require mailing lists, but we are updating the provisions to also allow agencies to use electronic methods to administer the activities of the mailing list, to include subscribing to the list, maintaining the list, and distributing the required information to the parties on the list. We expect that some agencies may use both electronic methods and more traditional methods (*e.g.*, a mailing list sign-up sheet posted at a public hearing) to administer their permits mailing lists.

Part 71.11(d)(3) currently requires the EPA and delegated agencies to affirmatively solicit for their mailing lists. As part of this proposed rulemaking, we are proposing revised language for part 71 to explain that the permitting authority will notify the public via website of the opportunity to be included or removed from its mailing list. We expect that many agencies will add a generally accepted method (*e.g.*, hyperlink sign up function, radio button) to their websites that will facilitate easy and convenient sign-up for their mailing list, as well as methods for unsubscribing. As noted above, many air agencies maintain a website that currently supplements the newspaper noticing of their permits with online noticing of their permits.



Furthermore, some of these agencies rely on a variety of methods, beyond mailing lists, to alert the affected community that their website has been updated with a new draft permit or new information about a permit. Though not required under this proposed rule, we encourage air agencies to continue the practice of providing appropriate additional outreach to the general public for permits of interest. These outreach efforts may consist of opportunities presented by social media services (*e.g.*, RSS feed, Twitter, Facebook) where appropriate, or more traditional techniques such as online community bulletin boards or community newspapers. We are proposing that use of these additional outreach methods is not required, but is discretionary for the permitting authority.

Also, it is important to reiterate that we are not proposing to alter any existing requirements regarding the content of the public notice. We are, however, expressly requiring that the notice direct interested parties to information on how to request and/or attend a public hearing and how to access additional information relevant to the draft permit. Requirements regarding additional information in the notice vary across the different sections of the permitting rules, and may further vary among different individual permitting authorities. Most notices of availability will contain, at a minimum, the permit number, name and physical address of the facility, and the name and contact information of a person from whom interested persons may obtain additional information on the draft permit.

We request comment on this approach to defining e-notice as it applies to this proposed rule. In particular, we request comment on whether this approach and the corresponding rule text preclude some forms of electronic noticing that are currently being used or under development.

To clarify what this action is proposing for e-notice, in the following section we provide a summary of the proposed rule requirements. In addition, we are providing recommended “best

practices” for electronic notice. These best practices recommendations are intended to foster improved communication and outreach of permit notices beyond the minimum requirements being proposed in this action.

*1. Proposed Regulatory Requirements for E-Notice*

In order to satisfy the requirement for e-notice of a permit, the permitting authority shall electronically post, for the duration of the public comment period, the following information on a public website identified by the permitting authority:

- (1) notice of availability of the draft permit for public comment;
- (2) information on how to access the permit record (either electronically and/or physically);
- (3) information on how to request and/or attend a public hearing on the draft permit; and
- (4) all other information currently required to be included in the public notice under the existing regulations.

In addition, where already required by the current rules, the permitting authority shall maintain a mailing list of persons who request to be notified of permitting activity and shall distribute (*e.g.*, by email) the above information to these persons.

*2. Recommended Best Practices for E-Notice*

While not proposed as a requirement of this rule, the EPA is recommending best practices that can be used to augment the above requirements for electronic notice. These best practice methods are not required to satisfy the e-notice requirements for this proposed rule, but may be helpful in the course of providing the fullest communication to the public on permitting actions. The recommended best practices of e-notice include:

- Providing notice of the final permit issuance on the website.
- Soliciting actively for the mailing list on the website (*e.g.*, website equipped with radio button, hyperlink, or “click here” function to subscribe).
- Providing options for email notification that enable subscribers to tailor the types of notifications they receive (*e.g.*, a person can request notification of only draft permit notices for major source actions, rather than receiving notice of all permitting activity by the agency).

*B. What are the e-access requirements?*

For the purpose of this proposed rule, the term “e-access” means the permitting authority shall post on its website (or a website identified by the permitting authority) the draft permit for the duration of the public comment period. As with e-notice, the posting of the draft permit should be in a prominent location on the website, and the website should allow user-friendly access to the draft permit. Access to all other relevant materials that represent the record for the permit shall also be available to the public during the public comment period, but these other materials can be accessible either electronically or at a physical location, or in both locations. In this action, we are proposing that if the permitting authority provides e-notice, then it must also provide e-access.

In defining the requirements for e-access and authorizing the use of e-access for major source permits that are undergoing public notice, we are proposing to add new paragraphs to certain program rules and specifically revise other program rules that have draft permit access requirements containing language that could be read to suggest that access requirements could not be met through electronic availability of the permit materials. *See, e.g.*, 40 CFR

51.166(q)(2)(ii), 55.5(f)(1)(i). These revised rule paragraphs would expressly allow for electronic availability of permit documents.

As noted above, nothing in this proposed rule affects the requirement for an agency to maintain a record to support the decisions of the permitting actions and to make it available to the public. Furthermore, nothing in this proposed rule affects the record retention policies and requirements of governmental agencies that provide schedules for retention and disposal of paper and electronic records. Finally, the electronic posting of draft and final permits, including information supporting the permit decisions (*e.g.*, permit applications), would be subject to the applicable CBI policies and requirements of the air agency and, consequently, some permit-related documents may be redacted or otherwise withheld from viewing on a website or public reading room if it is determined that the document contains CBI.

We request comment on this approach to defining e-access as it applies to this proposed rule. In particular, we request comment on whether this approach and the corresponding regulatory text preclude some forms of electronic access that are currently being used or under development. Also, as noted above, we are requesting comment on an alternative proposal that does not require air agencies with EPA-approved programs to electronically post the draft permit (*i.e.*, e-access) if they choose e-notice as their consistent noticing method.

To clarify what this action is proposing for e-access, in the following section we provide a summary of the proposed rule requirements. As we provided in the preceding section on e-notice, we are also sharing what we consider to be recommended best practices for electronic access.

*1. Proposed Regulatory Requirements for E-Access*

In order to satisfy the requirement for electronic access, the permitting authority shall electronically post, for the duration of the public comment period, the draft permit on a public website identified by the permitting authority, which may include the permitting authority's public website, an online state permits register, or a publicly-available electronic document management website that allows for downloading documents. The draft permit file should be in a format that can be opened and viewed by the public using commonly accepted computer software (*e.g.*, portable document format that can be opened with Adobe Acrobat Reader). We request comment on whether our rules should require that the electronic format of the draft permit be viewable by software that is "free" (*i.e.*, available without charge) to the user.

The Federal Docket Management System (FDMS) at <http://www.regulations.gov> is a web-based docket system used for, among other things, federal permitting actions that require public notice and comment. This searchable docket system allows for public access and downloading of the draft permit and permit related documents. The <http://www.regulations.gov> website also allows the public to register to receive email alerts to track activity on selected dockets. Similar online data management systems exist in a number of states and allow agencies to provide digital access to permits and other records.

## *2. Recommended Best Practices for E-Access*

While not proposed as a requirement of this rule, the EPA is recommending best practices that can be used to augment the above requirement for electronic access. These best practice methods are not required to satisfy the e-access provision for this proposed rule, but may be helpful in the course of providing the fullest communication to the public on permitting actions. The recommended best practices of e-access include:

- Continued posting of the draft permit on the website past the public comment period (*e.g.*, until issuance of the final permit or until the permit application has been denied or withdrawn).
- Posting the final permit on the website for a specified period of time after issuance of the permit (*e.g.*, through the permit appeal period or petition period).
- Posting (or hyperlinking to) other key permit support documents on the agency website or on a publicly-available online document management site (*e.g.*, FDMS), such as the permit application, Statement of Basis, fact sheet, preliminary determination, final determination, and response to comments.<sup>15</sup>

### *C. Requirements for Agencies Implementing the Federal Permit Program Rules*

For programs in which the permits are issued by the EPA or by an air agency that implements the EPA's federal permitting rules (*i.e.*, 40 CFR parts 52, 55, 71 or 124), the EPA is proposing specific changes to the public notice and permit access methods. We are proposing to remove the mandatory newspaper notice requirement and mandatory access to the permit information at a physical address, and to replace these requirements with mandatory e-notice and mandatory e-access, as those terms are outlined in this rule, as the consistent noticing method for major source permits issued under the federal rules for NSR and title V, and for all EPA-issued

---

<sup>15</sup> While the EPA believes it is a best practice to electronically post as many of the key permit decision documents and information as possible, we recognize that air quality modeling runs and other permit data files may not be compatible with e-access. These documents typically cannot be uploaded to an electronic format due to the size and storage requirements in the electronic posting. In some cases, permitting authorities may choose to upload a description of these documents with directions on how to access the files or how to request access to them.

OCS permits.<sup>16</sup> While each of these programs currently has specific rule provisions for noticing that may be worded differently depending on the program, we are proposing to replace the existing rule provisions with consistently worded provisions that describe the requirements for mandatory e-notice and e-access.

As noted in the above sections of this preamble, if an agency is satisfying the requirements of e-notice and e-access, the permitting authority would retain the discretion to supplement the e-notice with any other noticing method (*e.g.*, newspaper publication, announcement through social media) depending on the specific circumstances of the permit application, such as the location of the proposed project and the accessibility of information sources by the affected community and other stakeholders. Moreover, the EPA recommends that agencies supplement their website postings with notices in newspapers and other forms of print media when noticing draft permits for facilities that are in areas where the agency believes such print media may enhance noticing efforts for certain audiences among the interested public. The EPA specifically encourages agency practices that consider the input and special needs (such as social, economic and geographic factors at the location) of the particular communities that may be affected by a permit action in order to provide public notice by methods that would better reach particular communities.<sup>17</sup> Thus, we are not proposing to require that the permitting agency provide additional noticing methods beyond e-notice. At the same time, nothing in the proposed

---

<sup>16</sup> OCS permits issued by delegated agencies should use the approved public notice requirements of the delegated agency. 40 CFR 55.11.

<sup>17</sup> For example, an agency may determine that a permitting action may potentially impact a community that has a large population with limited English proficiency and could decide that it is prudent to provide multilingual notices of the draft permit to reach the affected community. See <http://www.epa.gov/ocr/limited-english-proficiency> and <http://www.lep.gov/>.

rule revisions prevents the permitting agency from also providing additional notice by a method other than e-notice.

With respect to title V in particular, the rule revisions include additional changes in order to support the movement to e-notice. Currently, the title V regulations in part 71 include the use of a mailing list for public notice purposes. This proposal includes regulatory revisions to amend the EPA's solicitation obligations associated with the mailing list, but it otherwise keeps the mailing list in place. The EPA interprets its rules, and understands that many air agencies do as well, to allow for the mailing list to be maintained in an electronic format. Further, the EPA recognizes that many air agencies also maintain their part 70 mailing lists in an electronic format and that such a format is generally supported by stakeholders as well. *See, e.g., Clean Air Act Advisory Committee (CAAAC) Task Force Report at 202, 206-207.*<sup>18</sup> With respect to the EPA's mailing list obligations for the federal program, we are proposing to remove the specific language within 40 CFR 71.11(d)(3)(E) and 71.27(d)(3)(E) that requires the EPA to solicit mailing list membership through "area lists" and "periodic publication in the public press."

Similar changes are proposed for 40 CFR part 124, which are "general program requirements" that apply to federally-issued PSD and OCS permits, as well as permits issued for other media programs. 40 CFR 52.21(q), 40 CFR 55.6(a)(3). Due to the existing language in part 124 covering a number of permit programs other than air permitting, the EPA is proposing minor

---

<sup>18</sup> In 2006, a task force assembled by the EPA finalized a document titled, "Final Report to the Clean Air Act Advisory Committee: Title V Implementation Experience." This document was the result of the task force's efforts to report on the implementation performance of the operating permit program under title V of the 1990 Clean Air Act Amendments, based on the first 10 years of experience. The final report to the CAAAC, dated April 2006, can be found at [http://www3.epa.gov/airquality/permits/taskforcedocs/200604\\_report.pdf](http://www3.epa.gov/airquality/permits/taskforcedocs/200604_report.pdf).



revisions to part 124 in order to maintain the current provisions for the other permit programs and to specifically clarify public notice requirements associated with EPA-issued PSD permits (and PSD permits issued by any program that implements 40 CFR 52.21). In this action, we are proposing to establish a new paragraph within paragraph 124.10(c)(2) that applies exclusively to PSD permits (and OCS permits, which use the PSD provisions) with clearly identified public notice requirements that will require e-notice rather than newspaper notice. The part 124 provisions would continue to require the agency to solicit the public to be added to a mailing list and to provide specific notifications (*e.g.*, state, local governments, resource agencies). However, the proposed new provision would allow that in lieu of the existing requirement in part 124 regarding soliciting persons for “area lists” and notifying the public of the opportunity to be on a mailing list, the agency may use generally accepted methods (*e.g.*, hyperlink sign up function or radio button on agency website, sign-up sheet at public hearing) that enable interested parties to subscribe to the mailing list.

The OCS regulations specify that EPA will use the applicable administrative and procedural requirements in 40 CFR part 124 and the federal title V rules (part 71 is incorporated by reference), and that the Administrator will follow the procedures used to issue PSD permits when using 40 CFR part 124. 40 CFR 55.6(a)(3), 40 CFR 55.13(f), 40 CFR 55.14(c)(5). Hence, as e-notice flexibility is added to parts 71 and 124, it will be incorporated by reference into the OCS regulations for EPA-issued OCS permits. In addition, specific language referencing the administrative procedures of 40 CFR 71 is proposed to be added to the Administrative Procedures and Public Participation requirements provisions of the OCS regulations to clarify that EPA may use either the applicable administrative procedures of 40 CFR 71 or 40 CFR 124 when issuing OCS permits.

We note that some air programs with EPA-approved plans for implementing the PSD program incorporate by reference the federal rule provisions – *e.g.*, 40 CFR part 52.21. Furthermore, some of these program rules automatically update whenever the EPA revises its rules and the revisions become effective. These agencies would not have the option to continue with newspaper notice as their noticing method (unless they revise their rules and undertake a SIP revision to remove the referencing of the federal rules). These agencies would be required to provide e-notice and e-access according to this rule. This same scenario would apply to programs that are delegated by the EPA to implement 40 CFR 52.21 and issue PSD permits on behalf of the EPA. We specifically solicit comment on whether any air program that incorporates by reference the federal permitting rules would have difficulty meeting the e-notice and e-access requirements of this proposed rule if the revisions become effective immediately upon finalizing the rule. We also solicit suggestions for addressing such difficulties.

In addition, we are proposing to delete a superfluous provision from 40 CFR 52.21(q) “*Public participation.*” The second sentence reads “[t]he Administrator shall follow the procedures at 40 CFR 52.21(r) as in effect on June 19, 1979, to the extent that the procedures of 40 CFR part 124 do not apply.” The preamble to the 1980 NSR rules explained the transition from the previous regulations to the consolidated permitting regulations at part 124: “...the procedures of the 1978 Part 52 regulations continue to apply to the extent that the new procedures have not yet displaced them. In time, the new procedures will displace the old ones entirely.” *See* 45 FR 52686, August 7, 1980. Since the procedures of 40 CFR 124 have displaced the old procedures, this sentence is no longer necessary.

We solicit comment on this “mandatory e-notice and e-access” approach for permit programs implemented by the EPA and by other agencies implementing the federal air permitting rules.

*D. Requirements for Agencies Implementing Approved Programs Pursuant to the EPA’s Permitting Rules for States*

For the noticing of major source permits issued pursuant to EPA-approved air agency programs under 40 CFR part 51 or 70, we are proposing to remove the mandatory newspaper notice requirement and provide these agencies with the option to select either e-notice or newspaper notice. A required element of these programs is to provide adequate notice and informed public participation, and this program element is not changing. However, a key aspect of this proposed approach is that the agency would be required to adopt one noticing method – known as the “consistent noticing method” – to be used for all of its notices. Thus, if an agency selects e-notice, it must provide e-notice for all of its draft permit notices. If a consistent noticing approach is not adhered to (*i.e.*, if the agency posted some notices to its website and others in the newspaper), it could lead to confusion for the public, who may not know where to look for permitting information regarding a source proposing to locate in the community. Accordingly, if the agency elects e-notice as its consistent noticing method (and e-notice is not available in its approved SIP), it must implement its choice of noticing method through a change in its program rules. As discussed later in this preamble, we are requesting comment on whether there are air agencies that believe they can implement e-notice and e-access in lieu of newspaper notice without contravening their state rules.

As with the proposed mandatory requirements for e-notice for the federal programs, if the e-notice option is chosen as the consistent noticing method for a particular state program, the

state must use e-notice to provide the information required under existing public notification regulations and must provide e-access to the draft permit. All other permit documents required under existing regulations can be accessible either electronically or physically (*i.e.*, in a designated reading room). However, if the agency chooses newspaper notice as the consistent noticing method, then the agency can either provide electronic access or physical access (or both) to the additional materials that existing regulations require be made publicly available.

We are aware that many states already have websites that are actively used for permitting purposes – *e.g.*, permit application instructions, form downloads, online permit applications. Consequently, we anticipate that most of these state agencies will opt for the e-notice approach, since it may mirror what they are already doing to supplement their newspaper notice. For these agencies, we believe this change would be minimally burdensome and would relieve them of the additional burden of providing newspaper notice. At the same time, we recognize that some air agencies do not have an established website, or they may have a website but they would need to invest in significant infrastructure to increase their website capability in order to accommodate the posting of permit information that existing regulations require be included in a newspaper notice. These agencies may opt to continue with the newspaper notice as their consistent noticing method.

With regard to part 70, the proposed revisions would affect only the mandatory newspaper language, and would not change any other obligations such as the requirement to have or maintain a mailing list. The EPA interprets the existing mailing list obligations to include either electronic or hardcopy mailing list, or both, at the reasonable discretion of the air agency.

Furthermore, nothing in these proposed revisions to parts 51 and 70 prevents the air agency from also providing public notice through other methods including, but not limited to, a

newspaper notice. As with our proposal for noticing of permitting actions under the federal rules, under this proposed option, agencies would have the discretion to provide public notice through other methods – in addition to their consistent noticing method – if a particular permit action warrants it and ensure that the notice of the draft permit reaches the affected community and stakeholders. We encourage all air agencies to consider facility- and permit-specific facts in determining the appropriate methods of public notice, such as expected public interest, location and type of source being permitted, environmental justice considerations, including the language that will be understood by the affected community.

To summarize, we propose that for air agencies that implement 40 CFR part 51 or 70, for the noticing of their major source draft permits, they either provide: (1) mandatory e-notice and e-access, as these terms are used in the context of this proposed rule, or (2) newspaper notice with either electronic access (*e.g.*, website) and/or physical access (*e.g.*, reading room) to the draft permit. In choosing (1) or (2), they must use a consistent method of noticing. These air agencies can continue to supplement the consistent noticing method with other noticing methods at their discretion or as currently required under part 70. We specifically request comment on this approach for EPA-approved NSR and title V permit programs to establish either “e-notice” or newspaper notice as the single, consistent noticing method.

As noted above, since many air agencies with EPA approved programs currently have a website and notice draft permits and provide permit documents on their websites, we do not believe that the e-notice requirement would impose any additional burden on most agencies. We are specifically seeking comment on whether (and how significantly) this rule imposes additional burden on air agencies that already provide postings of permits on their websites and those air agencies that do not already use a website for permit postings.

Finally, the EPA is requesting comment on two alternative approaches to the ones being proposed in this rule and described above, one for providing notice and the other for providing access. In the first alternative approach, an agency implementing rules pursuant to either part 51 or 70 would not be required to choose a consistent noticing method. Thus, the agency could potentially provide one noticing method for some permits (or some types of permits) and another noticing method for other permits. This approach is analogous to the “media neutral” approach that is available under § 51.161 for the noticing of minor NSR permits, as well as the approach adopted in the Tribal NSR Rule. *See* 40 CFR 49.157(b)(1). Neither of these other program rules requires a consistent noticing method. Thus, under such an approach for this rule, we would amend the part 51 and 70 rules that currently require “newspaper” notice to require use of website or newspaper notice, but without specifying a consistent noticing method. Alternatively, to provide additional flexibility to the agency, we could simply require that they provide notice via “a method reasonably likely to provide routine and ready access to the public” without imposing any more specific requirements. The EPA requests comment on whether to allow such an approach, how likely it is that this approach could lead to confusion (*e.g.*, if the permitting agency regularly or frequently changed its noticing method from one permitting action to another), and whether EPA should require the permitting agency to specify the circumstances under which it will use a particular method or articulate criteria for doing so. The EPA also requests comment on whether it is reasonable to assume that permitting authorities would try to avoid such problems because each agency is ultimately responsible to ensure that it provides adequate notice on each of its permits and access to the permit information. In other words, does the suggested requirement for the agency to notice via “a method reasonably likely to provide

routine and ready access to the public,” in and of itself ensure that some level of noticing consistency is achieved?

The EPA also requests comments on a second alternative approach to providing access, under which e-notice would not need to be coupled with e-access for state agency programs implementing approved rules pursuant to parts 51 and 70. This may help some states that notice permits using an online permits register (which would qualify for e-notice), but where the state may not have its own website to satisfy the “e-access” requirement of making the draft permit available electronically. As noted elsewhere in this preamble, the state would still be required to provide access to the draft permit, as well as any other documents that are part of the permit record.

*E. Soliciting Comment on Allowing Temporary Use of Alternative Noticing Methods*

We are requesting comments on adding a provision to each of the program rules that would allow an agency that is relying on e-notice (and/or e-access) to temporarily use another noticing medium for a reasonable period of time during which its website is unavailable. This may be necessary during planned website outages (*e.g.*, a transition to a different website platform) or unforeseen circumstances, such as website malfunctions or emergency situations (*e.g.*, hurricanes) that result in prolonged electrical system outages. We do not believe this same problem existed under the current regulations that require newspaper notice. This is based on the assumption that, in the event that a problem occurs with a newspaper that the agency plans to use, the agency can notice the permit in another newspaper in the area that it determines would provide adequate notice.

If an alternative noticing method is used, it would need to be publicly announced in some way before they occur, so that the public has reasonable notice of where to look for permit

notices during such outages. It would also need to assure adequate notice to the affected public. Noticing either in the newspaper or State Register could be an agency's alternative noticing method, since each method is generally presumed to provide adequate notice to the public.

Given the broad range of situations that could lead to problems with a website, it may be difficult to specify the limits of the duration of the "temporary" period. We expect that most agencies would generally have an incentive to restore operations to their website as soon as possible for cost purposes and to ensure that they continue to provide the most effective notice of their permitting actions. We request comment as to whether providing specific boundaries around the use of the alternative noticing method should be required, and how those boundaries should be established and what criteria should be used to judge their adequacy. We specifically seek comment on the appropriate criteria for invoking the alternative noticing method, the length of time it could be used, and how the transition to the alternative method would be conveyed to the public.

#### *F. Clarifying E-Notice and E-Access Applicability for Minor NSR Permits*

As noted earlier in this preamble, this rule proposal is not revising any regulatory requirements for minor NSR permits. Notably, this rule proposal is not revising the requirement for "notice by prominent advertisement" in 40 CFR 51.161(b)(3), because the prominent advertisement term, as discussed in the EPA's 2012 Memorandum, is sufficiently broad to allow for e-notice. However, while we are reaffirming the guidance provided in the EPA's 2012 Memorandum, we are proposing to amplify its policy guidance in two respects.

This rule is proposing to clarify that the EPA's 2012 Memorandum's interpretation of "prominent advertisement" in paragraph 51.161(b)(3) as "media neutral" also applies to paragraph 51.161(b)(1). The provision currently reads: "[a]vailability for public inspection in at



least one location in the area affected of the information submitted by the owner or operator and of the State or local agency's analysis of the effect on air quality." Thus, paragraph 51.161(b)(1) does not expressly require that permitting information be made available in the form of paper records, and we are proposing to clarify that it allow for electronic access to the permitting information. More specifically, we are proposing that allowing electronic access to the information submitted by the owner or operator and to the agency's analysis of the effect on air quality by way of a website identified by the permitting authority would satisfy the requirement of "availability for public inspection in at least one location in the area affected..." We believe this approach is consistent with the memorandum with respect to allowing use of electronic and other methods to provide notice of minor NSR actions, and it is reasonable for the same reasons discussed in this preamble for allowing electronic access to permit documents for major source permits. We specifically request comment on this clarification for the minor NSR program rules.

In addition, in issuing the EPA's 2012 Memorandum, the EPA indicated that our guidance on the meaning of the term "prominent advertisement" in 40 CFR part 51.161(b)(3) applies only to minor sources and not to synthetic minor sources. *See* Footnote 1. Given the statement in the memorandum, which raises uncertainty about the flexibility to use media neutral methods for synthetic minor programs, the EPA has now determined that it is not appropriate to exclude synthetic minor permits in this regard, and that this action should propose to clarify that the limitation established in the footnote is no longer appropriate. In this action, we are proposing to treat minor and synthetic minor sources identically in this regard by extending the EPA's media neutrality policy to synthetic minor sources. In addition, we propose to extend this policy to any permit action that relies on the public notice requirements of § 51.161.

We seek comment on these two proposed revisions to the policy guidance provided by the EPA’s 2012 Memorandum. Through the preamble to the final rule for this action, we intend to provide amplifying guidance with regard to the EPA’s noticing policies for permits subject to 40 CFR 51.161.

#### *G. Notice Requirements for PSD Permit Rescissions*

In addition to the existing mandatory newspaper notice required for draft permits, part 71 permits programs and COA designations, the permitting program rules contain another regulatory provision that provides for newspaper notification. In the federal PSD regulations, a provision titled “permit rescission” requires that “[i]f the Administrator rescinds a permit under this paragraph, the public shall be given adequate notice of the rescission” and that notice “in a newspaper of general circulation in the affected region...” is considered adequate. 40 CFR 52.21(w)(4). While this language does not foreclose the notion that another type of noticing method could also be “adequate,” we are proposing to revise the rule provision to specifically require that the permitting authority notify the public of a permit rescission electronically – *i.e.*, on a website identified by the permitting authority. This “mandatory e-notice” approach for permit rescissions under 40 CFR 52.21(w) is consistent with our approach for the noticing of other actions that implement the federal program rules. We specifically request comment on whether this is an appropriate approach for the noticing of a permit rescission.

### **V. Policy Rationale and Legal Basis**

This proposal to revise these CFR sections to allow permitting authorities to provide public notice of permits and other actions on a publicly available website in lieu of the newspaper publication requirement, when final and effective, would reduce burden to all air agencies. In addition, the proposed requirements are consistent with practices some permitting

agencies currently follow to supplement existing requirements for noticing permits, and they would provide flexibility for agencies to use the noticing methods that they determine are appropriate, reasonable and effective without the need for newspaper notice. These proposed changes are consistent with the approaches taken in EPA's permitting rule for Indian country and in EPA's minor NSR regulations, and with broad stakeholder input regarding more effective advertisement of permitting actions.

As noted earlier in this preamble, Internet websites have become an increasingly effective and widely employed avenue for broadly disseminating information to the public and many agencies currently supplement the required newspaper publication by posting draft and final permits on their agency websites. Since the Internet is generally available at all times, it allows for the noticing of a permit, and for the information that supports the permit, to be available and accessible over a longer period of time, rather than a one-day newspaper publication of the notice. As noted above, most states are already using the Internet (to varying degrees) for noticing permitting actions, so we do not anticipate many agencies having to spend a lot of time or funding on upgrading their existing websites to meet the proposed requirements. For agencies currently without a website for noticing permits and hearings, the use of e-notice and other applicable alternatives may allow the permitting authority to redirect funds that were being used for newspaper publication in order to establish and maintain a website where permit information could be posted. Thus, the EPA anticipates these proposed rule revisions, when finalized, would result in more effective dissemination of permitting and hearing information to the surrounding communities (including the underserved and environmental justice (EJ) communities) and possibly substantial cost savings for both the EPA and for state and local program permitting authorities.

We believe these proposed requirements are consistent with CAA goals of providing public notice and promoting access to information in permitting, and they would enhance the permitting process. With respect to preconstruction permit actions, CAA § 160(1) establishes a statutory policy of providing for informed public participation in the permitting process, and CAA § 165(a)(2) precludes issuing a PSD permit without an opportunity for the public to review the decision and submit comments. These proposed revisions enable the use of e-notice and e-access for both EPA-issued and other agency-issued permits and further the statutory policies these provisions establish. With respect to operating permits, the 1990 CAA Amendments require that the EPA rules for permitting programs provide “adequate, streamlined and reasonable procedures” including an opportunity for the general public to have informed participation in the air permitting process in the areas affected by a proposed permit. CAA § 502(b)(6). Also, § 502(b)(8) provides that procedures to make information available should be consistent with the need for expeditious action on permit applications or related matters. The proposed revisions, which enable the use of e-notice for both EPA-issued and other agency-issued permits, would improve implementation of the statutory policy of ensuring public notice of title V permits by providing more effective noticing procedures in affected areas across the country.

Another basis for, and benefit from, the proposed action would come from the cost savings associated with the move to electronic notification instead of legal notice advertisements in newspapers. The EPA’s annual costs for publishing notices in newspapers is a significant annual expenditure, and it is the EPA’s understanding that the newspaper publication for noticing permits has become costly for states as well. The EPA’s proposal intends to reduce those costs by allowing the permitting authority to notice draft permits using a publicly available website in

lieu of newspaper publication. While e-notice may pose a burden for certain states that do not already have a permitting website, the EPA is not mandating that permitting authorities that implement 40 CFR part 51 or 70 adopt the e-notice and e-access approaches, so these agencies can continue with the current program of newspaper publication if they prefer. In addition, permitting authorities that incorporate by reference the federal PSD rules at 40 CFR 52.21 that wish to continue to use newspaper notice as their primary method of notice can undertake a SIP revision to remove the reference to the federal provisions and adopt their own noticing rules that conform to § 51.166.

As an example of the approximate costs for publishing permit and hearing notices in the newspaper, in Fiscal Year 2013, the EPA Regions incurred a cost of over \$40,000 to publish newspaper notices for NSR, title V and OCS permits. In Fiscal Year 2014, newspaper notice for the EPA regional permits exceeded \$35,000. Newspaper publication costs vary widely depending on a number of factors, but for most permits the cost to notice averages between \$600 and \$1,000 per notice. While these costs vary on a yearly basis in each EPA Region, the overall annual costs are significant for the EPA. Moreover, given that state and local air agencies generally process more air permits than the EPA, it is reasonable to expect that the annual costs incurred for newspaper publication by state and local permitting agencies exceed the annual costs incurred by the EPA. (We note, however, that some air agencies require that the applicant bear the cost of newspaper publication.)

While we recognize that there is a cost associated with developing and maintaining an agency website for the purpose of noticing permits, the incremental cost to upload permit notices is expected to be very low, and we expect the overall burden would be less than that of the existing rules that mandate newspaper publication. This is because most agencies already have

their own websites (or some other means to electronically notice draft permits and hearings) and they will continue to have their websites regardless of the requirements that are being proposed by this action. Thus, even though the costs of creating, upgrading and maintaining a website and providing web security may very well be many times higher than the cost of an agency's annual newspaper notice, states are choosing to continue to have a website due to the convenience of noticing and the ability to level out the overall costs of the website across all of the program areas of the agency. Furthermore, for agencies that already do web postings and posting of the draft permit, the newspaper requirement is duplicative and consequently the removal of the requirement would result in savings. The EPA specifically seeks comments on the potential cost savings, and the possibility of increased burden, from the specific noticing requirements in this rule proposal.

A broad range of stakeholders has identified e-notice as a more efficient, more prominent, less costly and more cost-effective, and more reasonable approach to public notice of permitting actions, as compared to newspaper notice. For example, e-notice is responsive to recommendations from the CAAAC's Title V Task Force Report, which includes a number of recommendations for implementation improvements, such as public notice. Importantly, task force members agreed unanimously on two recommendations related to the means of providing public notice. First, task force members recommended that state program rules should be allowed to include alternatives to newspaper notification, provided the alternative is more effective in informing a cross section of the affected public. (A remaining concern mentioned was that members of the public may lack routine access to the Internet.) *See* Recommendation #1 at 210. Second, task force members agreed that states should improve their title V websites to provide better notice and access to relevant documents in a permit proceeding. Accordingly, the Final

Report recommended that the EPA should encourage permitting authorities to provide the option to receive notification by email instead of traditional mail, and to maintain their websites with information, documents, and dates helpful for public participation, including how to sign up to be included on a mailing list. *See Recommendation #3 at 210.* While these recommendations were focused on permitting under title V, the EPA believes that the same concepts and concerns would also apply to NSR and OCS permits.

As noted in the previous sections, providing e-notice is consistent with noticing requirements of the EPA's Tribal NSR Rule issued in 2011 and with the EPA's 2012 Memorandum that clarified the term "prominent advertisement" is media neutral for the minor NSR program. This action also supports Executive Orders 13563 and 13610 (issued in 2011 and 2012, respectively), which direct the Agency to modernize its rules periodically in order to achieve regulatory objectives more effectively, considering the agency resources and priorities.

## **VI. Implementation**

### *A. Agencies Implementing Federal Preconstruction Permit Program Rules*

Once this rule becomes final, it will become effective within 30 days for air permitting programs that implement the federal program rules at 40 CFR parts 52, 55 and 124. This includes EPA Regions, air agencies that are delegated authority by the EPA to issue permits on behalf of the EPA (via a delegation agreement), and air agencies that have their own rules approved by EPA in a SIP and the SIP incorporates by reference the federal program rules and automatically updates when EPA's rules are amended. Under this rule proposal, these programs would be required to implement e-notice and e-access, with the exception of states that are delegated authority to issue permits under part 55 (as described earlier in this preamble).

While we expect that most programs that implement the federal permitting rules are in a position to comply with the proposed requirements for e-notice and e-access once this rule is finalized, some programs may need more time. More time may be necessary if, for example, a delegated air program needs to upgrade or improve its website to allow for e-notice and/or e-access. We request comment on whether any air programs that would be required to immediately implement 40 CFR 52.21 would need a “phase in” period, beyond the 30 days, in order to implement e-notice and e-access.

*B. Agencies Implementing State Preconstruction Permit Program Rules*

For an air agency with an approved SIP that implements 40 CFR part 51 and that chooses e-notice and e-access as its consistent noticing method, it may need to revise its applicable program rules and seek the EPA’s approval of a SIP revision in order to begin to implement e-notice in lieu of newspaper notice. (However, NNSR programs under § 51.165 are subject to the public participation requirements at § 51.161 and may be able to interpret their state rules and SIP to currently allow for implementing e-notice in lieu of newspaper notice.) Similarly, for an agency that implements rules that incorporate by reference our federal program regulations (40 CFR 52), and if its rules do not automatically update upon the EPA amending its federal rules, it may need to amend its regulations and seek the EPA’s approval of a SIP revision in order to implement e-notice and e-access in lieu of newspaper notice.

Under this proposed rule it is voluntary for these programs to move to e-notice and e-access, and we are not proposing to impose a deadline for submission of SIP revisions for those programs that are choosing to adopt e-notice and e-access instead of newspaper notice. Furthermore, nothing in the current or proposed 40 CFR part 51 rules prevents an agency



from beginning to implement e-notice and e-access methods once the agency is ready, but depending on the air agency's rules there may be ongoing obligations to continue with newspaper notices until the agency revises its rules. We request comment on whether agencies believe they have the ability to implement e-notice and e-access in lieu of newspaper notice without amending their state rules.

### *C. Agencies Implementing Approved Operating Permit Programs*

Consistent with title V and the part 70 regulations for initial program submittals, approved part 70 programs must provide for implementation of 40 CFR 70.7, including subsection "h" which sets forth the public participation obligations including "adequate procedures for public notice." *See, e.g.,* 40 CFR 70.4(b)(16). A program revision may be necessary when the relevant federal regulations are modified or supplemented. 40 CFR 70.4(i). When part 70 is revised after the air agency program is approved, the EPA determines the need for conforming revisions, but the approved program may initiate a program revision on its own initiative. *See, e.g.,* 40 CFR 70.4(a) and (i). Under the proposed rulemaking, air agencies implementing part 70 have a choice as to whether or not to adopt e-notice as their consistent method of public notice of air permits. If an air agency chooses that approach and a program revision is necessary (*e.g.,* additional authority is needed), then the agency should initiate a program revision by undergoing a rule change and submitting a program revision package to the EPA for review and approval consistent with § 70.4(i)(2).

As previously noted in this preamble, this proposal would not change the requirement to provide "adequate procedures for public notice." Consequently, we believe that a program revision will not necessarily be required for all approved programs and that certain agency programs could implement e-notice and e-access upon approval of the rules at the state level.

We propose that, for an agency that needs only to revise the agency program rules to clarify its implementation of e-notice and e-access but does not otherwise require a program change because the current program practice includes electronic posting of public notices and the draft permit and has adequate authority and resources for maintaining the practice, that such agency does not need a program revision for implementing the revised part 70 notice requirements. We request comment on our proposed determination that certain approved programs will not need a program revision for implementing e-notice. Alternatively, the EPA proposes that these program revisions are non-substantial. Accordingly, the EPA Regional offices would issue direct approvals of these program revisions concurrent with their notice of proposed approval. We request comment on our interpretation that the program revisions are non-substantial.

#### *D. Agencies Delegated to Implement the Federal Operating Permit Program*

With regard to the proposed part 71 program revisions, once the rules are finalized, an air agency that is delegated the part 71 program would likely need to update its delegation agreement to update its notice procedures consistent with the e-notice requirement in the federal rules.

### **VII. Environmental Justice Considerations**

The 1990 CAA Amendments generally require that the EPA or the permitting authority provide for adequate procedural opportunity for the general public to have informed participation in the air permitting process in the areas affected by a proposed permit. These areas include EJ communities.

The effectiveness of noticing methods for reaching underserved and EJ communities is a substantial concern to the EPA. A 2011 report issued by NEJAC found that publication in the

legal section of a regional newspaper is antiquated and ineffective, and is not ideal for providing notice to affected EJ communities.<sup>19</sup> Regarding public participation, the report recommends to the EPA: “To ensure meaningful public participation, the public notice and outreach process must include direct communication in appropriate languages through telephone calls and mailings to EJ and tribal communities, press releases, radio announcements, electronic and regular mail, website postings and the posting of signs.” Thus, the NEJAC specifically listed website postings as a method to ensure meaningful public participation. The EPA concludes that notice via the Internet would be a viable and effective means of making information widely available to the public. We encourage permitting authorities to provide additional notice where they determine that a specific jurisdiction or population would be better served with notice by traditional newspaper or another noticing method.

## **VIII. Statutory and Executive Order Reviews**

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:*

#### *Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### *B. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing

---

<sup>19</sup> “Enhancing Environmental Justice in EPA Permitting Programs.” National Environmental Justice Advisory Council. April, 2011, pp. 20-21, <http://www3.epa.gov/environmentaljustice/resources/publications/nejac/ej-in-permitting-report-2011.pdf>.

regulations and has assigned OMB control numbers 2060-0003 (for PSD and NNSR permit programs) and 2060-0243 and 2060-0336 (for operating permit programs).

In this action, the EPA is proposing to revise regulations to address public noticing method requirements for permits for major sources of air pollution. It is important to note that the proposed rule revisions would not require air agencies that implement the permitting program through an EPA-approved title V program or SIP to use e-notice. These agencies may continue to provide notice by newspaper publication or they can adopt e-notice as their consistent noticing method. Only in the latter case would an agency be required to revise the title V program rules or undertake a SIP revision. For EPA-delegated agencies, and for agencies that incorporate by reference the federal rules and their rules automatically update when the EPA revises its rules, no rulemaking action would be required by the agency to adopt the e-notice requirements. In addition, an agency delegated a part 71 program may need to update its delegation agreement. However, if any of these agencies desire to continue to provide notice by way of newspaper publication, they could request removal of delegation, revise their program rules consistent with the rules for state programs (*e.g.*, 40 CFR 51.166), and undertake a SIP revision. An agency delegated the part 71 program may have to choose between implementing e-notice, obtaining approval for implementing a part 70 program, or relinquishing their title V program. Given that many air agencies already are providing various forms of electronic notice as a supplement to their newspaper notices, we anticipate that many agencies will cease to notice permits by way of newspaper. However, to the extent that a SIP revision or a title V program revision is necessary to effect the changes being proposed, we believe that the burden is already accounted for under the approved information collection requests noted above.

In addition, the proposed rule would not create any new requirements for regulated entities, since air agencies are responsible for the noticing of permits. Some industry sources could experience a reduction in costs for permitting in cases where the permitting agency requires that the cost of the newspaper public notice be incurred by the permit applicant.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Entities potentially affected directly by this proposal include state, local and tribal governments, and none of these governments would qualify as a small entity. Other types of small entities are not directly subject to the requirements of this action.

*D. Unfunded Mandates Reform Act (URMA)*

This action does not contain any unfunded federal mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. Specifically, these proposed public notice revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. Elsewhere in

this preamble we specifically describe the interaction of this proposed rule with tribal air agencies. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. The results of this evaluation are contained in Section VII of this preamble titled, “Environmental Justice Considerations.”

## **IX. Statutory Authority**

The statutory authority for this action is provided by 23 U.S.C. 101; 42 U.S.C. 6901, *et seq.*; 42 U.S.C. 300f, *et seq.* 33 U.S.C. 1251, *et seq.*; 42 U.S.C. 7401, *et seq.*

## **List of Subjects**

### **40 CFR Part 51**

Environmental protection, Administrative practice and procedure, Air pollution control.

### **40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference.

### **40 CFR Part 55**

Environmental protection, Administrative practice and procedure, Air pollution control.

### **40 CFR Part 70**

Environmental protection, Administrative practice and procedure, Air pollution control.

### **40 CFR Part 71**

Environmental protection, Administrative practice and procedure, Air pollution control.

### **40 CFR Part 124**

Environmental protection, Administrative practice and procedure, Air pollution control.

---

Dated: December 21, 2015.

---

Gina McCarthy,  
Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## **PART 51 – REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS**

1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401 - 7671q.

### **Subpart I – Review of New Sources and Modifications**

2. Section 51.165 is amended by adding paragraph (i) to read as follows:

#### **§51.165 Permit requirements.**

\* \* \* \* \*

(i) *Public participation requirements.* The reviewing authority shall notify the public of a draft permit by a method described in either paragraph (i)(1) or (2) of this section. The selected method, known as the “consistent noticing method,” shall comply with the public participation procedural requirements of § 51.161 of this chapter and be used for all permits issued under this section and can be supplemented by other methods on individual permits at the discretion of the reviewing authority.

(1) Post the information in paragraphs (i)(1)(i) through (iv) of this section, for the duration of the public comment period, on a public website(s) identified by the reviewing authority.

(i) A notice of availability of the draft permit for public comment;

(ii) The draft permit;

(iii) Information on how to access the record for the permit; and

(iv) Information on how to request and/or attend a public hearing on the permit.



(2) Publish a notice of availability of the draft permit for public comment in a newspaper of general circulation in the area where the source is located. The notice shall include information on how to access the draft permit and the record for the permit and how to request and/or attend a public hearing on the draft permit.

3. Section 51.166 is amended by revising paragraphs (q)(2)(ii), (iii), (iv), (vi), and (viii) to read as follows:

**§ 51.166 Prevention of significant deterioration of air quality.**

\* \* \* \* \*

(q) \* \* \*

(2) \* \* \*

(ii) Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination. This requirement can be met by making these materials available at a physical location or on a public website identified by the reviewing authority.

(iii) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment through a public hearing and through written public comment. Alternatively, these notifications can be made on a public website identified by the reviewing authority; however, the reviewing authority's selected notification

method (*i.e.*, either newspaper or website), known as the “consistent noticing method,” shall be used for all permits subject to notice under this section and can be supplemented by other methods on individual permits at the discretion of the reviewing authority. If the reviewing authority selects website notice as its consistent noticing method, the notice shall be available for the duration of the comment period and shall include the notice of public comment, the draft permit, and information on how to access the record for the permit and how to request and/or attend a public hearing on the permit.

(iv) Distribute (*e.g.*, via email, courier mail, postal service) a copy of the notice of public comment to the applicant, the Administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: Any other State or local air pollution control agencies, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, and any State, Federal Land Manager, or Indian Governing body whose lands may be affected by emissions from the source or modification.

\* \* \* \* \*

(vi) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The reviewing authority shall make all comments available for public inspection in the same physical location(s), or the same website(s), where the reviewing authority made available preconstruction information relating to the proposed source or modification.

\* \* \* \* \*

(viii) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location(s) or website(s) where the reviewing authority made available preconstruction information and public comments relating to the proposed source or major modification.

\* \* \* \* \*

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

4. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401, et seq.

### **Subpart A – General Provisions**

5. Section 52.21 is amended by revising paragraphs (q) and (w)(4) to read as follows:

#### **§ 52.21 Prevention of significant deterioration of air quality.**

\* \* \* \* \*

(q) Public participation. The administrator shall follow the applicable procedures of 40 CFR part 124 in processing applications under this section.

\* \* \* \* \*

(w) \* \* \*

(4) If the Administrator rescinds a permit under this paragraph, the Administrator shall post a notice of the rescission determination on a public website identified by the Administrator within 60 days of the rescission.

\* \* \* \* \*

## **PART 55 – OUTER CONTINENTAL SHELF AIR REGULATIONS**

6. The authority citation for the part 55 continues to read as follows:

**Authority:** Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101-549.

7. Section 55.5 is amended by revising paragraphs (f)(1)(i) and (ii) and (f)(2) and (4) to read as follows:

**§ 55.5 Corresponding onshore area designation.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(i) Make available, in at least one location in the NOA and in the area requesting COA designation, which can be a public website identified by the EPA, a copy of all materials submitted by the requester, a copy of the Administrator's preliminary determination, and a copy or summary of other materials, if any, considered by the Administrator in making the preliminary determination; and

(ii) Notify the public, by prominent advertisement in a newspaper of general circulation in the NOA and the area requesting COA designation or on a public website identified by the EPA, of a 30-day opportunity for written public comment on the available information and the Administrator's preliminary COA designation.

(2) A copy of the notice required pursuant to paragraph (f)(1)(ii) of this section shall be sent (or emailed) to the requester, the affected source, each person from whom a written request of such notice has been received, and the following officials and agencies having jurisdiction over the COA and NOA: State and local air pollution control agencies, the chief executive of the city and county, the Federal Land Manager of potentially affected Class I

areas, and any Indian governing body whose lands may be affected by emissions from the OCS source.

\* \* \* \* \*

(4) The Administrator will make a final COA designation within 60 days after the close of the public comment period. The Administrator will notify, in writing (which includes email), the requester and each person who has requested notice of the final action and will set forth the reasons for the determination. Such notification will be made available for public inspection.

8. Section 55.6 is amended by revising paragraph (a)(3) to read as follows:

**§ 55.6 Permit requirements.**

(a) \* \* \*

(3) *Administrative procedures and public participation.* The Administrator will follow the applicable procedures of 40 CFR part 71 or 40 CFR part 124 in processing applications under this part. When using 40 CFR part 124, the Administrator will follow the procedures used to issue Prevention of Significant Deterioration (“PSD”) permits.

\* \* \* \* \*

9. Section 55.7 is amended by revising paragraphs (f)(4)(ii) and (iii) to read as follows:

**§ 55.7 Exemptions.**

\* \* \* \* \*

(f) \* \* \*

(4) \* \* \*

(ii) Make available, in at least one location in the COA and NOA, which can be a public website identified by the permitting authority, a copy of all materials submitted by the requester, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(iii) Notify the public, by prominent advertisement in a newspaper of general circulation in the COA and NOA or on a public website identified by the permitting authority, of a 30-day opportunity for written public comment on the information submitted by the owner or operator and on the preliminary determination.

\* \* \* \* \*

## **PART 70 – STATE OPERATING PERMIT PROGRAMS**

10. The authority citation for the part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401, et seq.

11. Section 70.7 is amended by revising paragraphs (h)(1) and (2) to read as follows:

### **§ 70.7 Permit issuance, renewal, reopenings, and revisions.**

\* \* \* \* \*

(h) \* \* \*

(1) Notice shall be given by one of the following methods that is selected by the permitting authority as its “consistent noticing method”: by publishing the notice in a newspaper of general circulation in the area where the source is located (or in a State publication designed to give general public notice) or by posting the notice, for the duration of the public comment period, on a public website identified by the permitting authority. The consistent noticing method shall be used for all permits subject to notice under this paragraph. If website noticing is selected as the consistent noticing method, the draft permit shall also be posted, for the duration of the public

comment period, on a public website identified by the permitting authority. In addition, notice shall be given to persons on a mailing list developed by the permitting authority, including those who request in writing (via email, web sign up, or other method) to be on the list. The permitting authority shall use other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the permitting authority processing the permit; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person (or an email or website address) from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including those set forth in §70.4(b)(3)(viii) of this part, and all other materials available to the permitting authority (except for otherwise publically available materials and publications) that are relevant to the permit decision; a brief description of the comment procedures required by this part; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).

\* \* \* \* \*

## **PART 71 – FEDERAL OPERATING PERMIT PROGRAMS**

12. The authority citation for part 71 continues to read as follows:

**Authority:** 42 U.S.C. 7401, et seq.

### **Subpart A – Operating Permits**

13. Section 71.4 is amended by revising paragraph (g) to read as follows:

#### **§ 71.4 Program implementation.**

\* \* \* \* \*

(g) *Public notice of part 71 programs.* In taking action to administer and enforce an operating permits program under this part, the Administrator will publish a notice in the FEDERAL REGISTER informing the public of such action and the effective date of any part 71 program as set forth in §71.4(a) through (c) or (d)(1)(ii). The publication of this part in the FEDERAL REGISTER on July 1, 1996 serves as the notice for the part 71 permit programs described in §71.4(d)(1) (i) and (e). The EPA will also publish a notice in the FEDERAL REGISTER of any delegation of a portion of the part 71 program to a State, eligible Tribe, or local agency pursuant to the provisions of §71.10. In addition to notices published in the FEDERAL REGISTER under this paragraph (g), the Administrator will, to the extent practicable, post a notice on a public website identified by the Administrator of the part 71 program effectiveness or delegation, and will send a letter to the Tribal governing body for an Indian Tribe or the Governor (or his or her designee) of the affected area to provide notice of such effectiveness or delegation.

\* \* \* \* \*

14. Section 71.11 is amended by revising paragraphs (d)(3)(i) introductory text, (d)(3)(ii), and (d)(4)(i)(G) to read as follows:

**§ 71.11 Administrative record, public participation, and administrative review.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(i) By mailing (or emailing) a copy of a notice to the following persons (any person otherwise entitled to receive notice under paragraph (d) of this section may waive his or her rights to receive notice for any permit):



\* \* \* \* \*

(ii) By posting a notice on a public website identified by the permitting authority for the duration of the public comment period. The notice shall be consistent with paragraph (d)(4)(i) of this section and be accompanied by a copy of the draft permit.

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(G) The physical location and/or website address of the administrative record, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant are available as part of the administrative record; and

\* \* \* \* \*

## **Subpart B – Permits for Early Reductions Sources**

15. Section 71.27 is amended by revising paragraphs (d)(3)(i) introductory text, (d)(3)(ii), and (d)(4)(i)(E) to read as follows:

### **§ 71.27 Public participation and appeal.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(i) By mailing (or emailing) a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph (d) may waive his or her rights to receive notice for any permit):

\* \* \* \* \*

(ii) By posting a notice of availability and a copy of the draft permit on a public website identified by the permitting authority for the duration of the public comment period.

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(E) The physical location and/or website address of the administrative record, the times at which the record will be open for public inspection, a statement that all data submitted by the applicant are available as part of the administrative record, and the name, address, and telephone number of a person (or an email or website address) from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials, and all other materials available to the Administrator that are relevant to the permit decision;

\* \* \* \* \*

## **PART 124 – PROCEDURES FOR DECISIONMAKING**

16. The authority citation for part 124 continues to read as follows:

**Authority:** Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

### **Subpart A – General Program Requirements**

17. Section 124.10 is amended by adding paragraph (c)(2)(iii) to read as follows:

#### **§ 124.10 Public notice of permit actions and public comment period.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iii) For PSD permits:

(A) In lieu of the requirement in paragraphs (c)(1)(ix)(B) and (C) of this section regarding soliciting persons for “area lists” and notifying the public of the opportunity to be on a mailing list, the Director may use generally accepted methods (*e.g.*, hyperlink sign up function or radio button on agency website, sign-up sheet at public hearing, etc.) that enable interested parties to subscribe to a mailing list. The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request within a reasonable timeframe.

(B) In lieu of the requirement in paragraph (c)(2)(i) of this section to publish a notice in a daily or weekly newspaper, the Director shall notify the public by posting the following information, for the duration of the public comment period, on a public website identified by the Director: a notice of availability of the draft permit for public comment (or the denial of the permit application), the draft permit, information on how to access the administrative record, and information on how to request and/or attend a public hearing on the permit.

(C) In lieu of the requirement in paragraph (d)(1)(vi) of this section to specify a location of the administrative record, the Director may post the administrative record on a public website identified by the Director.

\* \* \* \* \*

[FR Doc. 2015-32639 Filed: 12/28/2015 8:45 am; Publication Date: 12/29/2015]